

CHAPTER NO. 388

SENATE BILL NO. 2149

By Burchett

Substituted for: House Bill No. 2050

By Lois DeBerry, Moore, Pruitt, Langster, Miller, Sontany, Maddox

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, Part 10, relative to taxes on cigarettes and tobacco products.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-1001, is amended by adding the following language as new, appropriately designated subdivisions:

() "Consumer" means an individual who is not a cigarette retail dealer or a licensed cigarette distributor. Such term shall also include any person, including a cigarette retailer or licensed distributor, who purchases cigarettes for personal consumption;

() "Delivery sale" means any sale of cigarettes to a consumer in this state when either:

(A) The purchaser submits the order for such sale by means of a telephonic or other method of voice transaction, the mails, or any other delivery service, or the Internet or other online service; or

(B) The cigarettes are delivered by use of the mails or other delivery service. A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without the state.

() "Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers and is not a seller, dealer or distributor.

SECTION 2. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by adding the following language as a new, appropriately designated section:

(a) (1) Each seller, dealer or distributor of cigarettes who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale shall provide a prominent and clearly legible statement in website or other literature to each prospective consumer that:

(A) Cigarette sales to consumers below the legal minimum purchase age are illegal;

(B) Sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with subsection (b)(2)(B); and

(C) Cigarette sales are subject to tax under § 67-4-1004; such statement shall include an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.

(b) Each seller, dealer or distributor of cigarettes who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale shall:

(1) Include a clear and conspicuous statement upon the package, as follows: "Cigarettes: Tennessee Law Prohibits Shipping to Individuals Under Age Eighteen, and requires the payment of all Applicable Taxes";

(2) Use a method of mailing, shipping, or delivery that obligates the delivery service to:

(A) Require the consumer placing the purchase order for the delivery sale, or another adult of legal minimum purchase age, to sign to accept delivery of the shipping container; and

(B) Restrict delivery to an adult of legal minimum purchase age.

(c) (1) Not later than the tenth day of each calendar month, a seller, dealer or distributor of cigarettes who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale during the previous calendar month shall file with the department a memorandum or a copy of the invoice that provides for each and every such delivery sale:

(A) The name and address of the consumer to whom such delivery sale was made;

(B) The brand or brands of the cigarettes that were sold in such delivery sale; and

(C) The quantity of cigarettes that were sold in such delivery sale.

(2) Any person who satisfies the requirements of 15 U.S.C.A. § 376 shall be deemed to satisfy the requirements of this subsection.

(d) (1) If a seller, dealer or distributor of cigarettes (who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale), commits a first violation of any provision of this section, then the seller, dealer or distributor shall be subject to a fine of one thousand dollars (\$1,000) or five (5) times the retail value of the cigarettes involved, whichever is greater. If the seller, dealer or distributor commits a second or subsequent violation of any provision of this section, then the seller, dealer, or distributor shall be subject to a fine of five thousand dollars (\$5,000) or five (5) times the retail value of the cigarettes involved, whichever is greater.

(2) If a seller, dealer or distributor of cigarettes (who mails, ships or otherwise delivers cigarettes in connection with a delivery sale), complies with all requirements imposed by subsection (b) and if the delivery service fails to comply

with its obligations imposed pursuant to subdivision (b)(2) in connection with such delivery sale, then the delivery service shall be subject to a fine of five hundred dollars (\$500).

(3) (A) Any cigarettes sold or attempted to be sold in a delivery sale that does not meet the requirements of this section shall be forfeited to the state and destroyed.

(B) All fixtures, equipment, and all other materials and personal property on the premise of any person who, with the intent to defraud the state, violates any of the requirements of this section shall be forfeited to the state.

(e) The attorney general or his designee, or any person who holds a valid permit under 26 U.S.C.A. § 5712, may bring an action in the appropriate court in the state to prevent or restrain violations of this section by any person, or any person controlling such person.

SECTION 3. Each person accepting a purchase order for a delivery sale shall collect and remit to the department of revenue all cigarette taxes imposed by law with respect to such delivery sale, except that such collection and remission shall not be required to the extent such person has obtained proof (in the form of the presence of applicable tax stamps or otherwise) that such taxes already have been paid to the state.

SECTION 4. Nothing within the provisions of this act shall be construed to directly or indirectly modify or amend any aspect of any provision of the Tennessee Tobacco Manufacturers' Escrow Fund Act of 1999, as amended, §§ 47-31-101 through 47-31-103, or the related statute codified at §§ 67-4-2601, et seq.

SECTION 5. This act shall take effect July 1, 2005, the public welfare requiring it.

PASSED: May 25, 2005


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 9th day of June 2005


PHIL BREDESEN, GOVERNOR